



December 23, 1999

Mr. Tommy W. Lueders, II
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR99-3749

Dear Mr. Lueders:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130567

The City of Midland (the "city") received a request for a copy of a specified criminal investigation report. You claim that the requested information is excepted from disclosure under section 552.108(a)(1) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime, if release of the information would interfere with the detection, investigation, or prosecution of crime. If such interference is not apparent on the face of the submitted information, a governmental body claiming this exception must explain, how release of the information will interfere with detection, investigation, or prosecution of crime.

We generally presume that section 552.108(a)(1) excepts information that relates to a pending or ongoing investigation or prosecution. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). Where the submitted information shows on its face that it relates to an investigation of a criminal incident in which the limitations period barring prosecution has not lapsed, we will generally consider the information to relate to an ongoing investigation or prosecution. The limitations period for misdemeanor charges is two years from the date of the commission of the offense. Code Crim. Proc art. 12.02. For felony charges, the limitation period is five years from the

date of the commission of the offense of theft, burglary, or robbery, and three years from the date of the commission of most other felonies. Code Crim. Proc art. 12.021. In this case, you relate that the investigation led to two arrests for "simple assault." Depending on circumstances, incidents of assault may result in either misdemeanor or felony charges. Penal Code § 22.01. The incident at issue occurred October 13, 1999. Therefore, prosecution of this case is not barred by a statute of limitations. We conclude that the responsive information may be withheld under section 552.108(a)(1).

Note however, that "basic information" is not excepted by section 552.108. Gov't Code 552.108(c). We believe such basic information refers to the "front page" information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). Thus, "front page" information is specifically made public and must be released even if it is not actually located on the front page of a report. The remaining information may be withheld under section 552.108(a)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns", written in a cursive style.

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 130567

Encl: Submitted documents

cc: Mr. Kurt Gscheidle
P.O. Box 60544
Midland, Texas 79711-0554
(w/o enclosures)